

920 KAR 1:070. Services for individuals who are deaf, hard of hearing, or speech impaired.

RELATES TO: KRS 2.110, 163.500, 163.506, 194A.005(1), 194A.030(9) 194A.060, 278.548, 309.300-309.319, 344.500(1), 28 C.F.R. 35.104, 35.160, 29 U.S.C. 794, 42 U.S.C. 12131-12213, 45 C.F.R. 160, 162, 164

STATUTORY AUTHORITY: KRS 12.290, 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for proper administration of the cabinet and its programs. In accordance with federal mandates in 28 C.F.R. 35.160, 29 U.S.C. 794, and 42 U.S.C. 12131-12213, and KRS 12.290 and 344.500(1), the Cabinet for Health and Family Services has a responsibility to provide accessibility to program services delivered directly by the cabinet or indirectly through a contractual or other arrangement to an individual who is deaf or hard of hearing. This administrative regulation establishes cabinet procedures for the provision of interpreting services to a client who is deaf or hard of hearing.

Section 1. Definitions. (1) "Assignment" means interpreting for a client as approved by a cabinet program.

(2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Cabinet program" means a program of service, financial aid, or other benefit administered by the cabinet and provided:

(a) Directly by the cabinet; or

(b) Indirectly by the cabinet through a contractual or other arrangement.

(4) "Client" means a person who:

(a) Applies in writing, electronically, verbally, or through a designated representative for participation in a cabinet program; or

(b) Receives a service, financial aid, or other benefit from a cabinet program.

(5) "Companion" means a family member, friend, or associate of an individual seeking access to a service, program, or activity of the cabinet, who, along with that individual, is an appropriate person with whom the cabinet communicates.

(6) "Deaf" and "hard of hearing" are defined by KRS 163.500.

(7) "Emergency" means a situation of an urgent nature in which a client determines that a delay of the event for more than twenty-four (24) hours is likely to result in loss of service, financial aid, or other benefit in a cabinet program.

(8) "Individual with a communication disability" means a person who is deaf, hard of hearing, or speech impaired.

(9) "Interpreter" is defined by KRS 309.300(4).

(10) "Interpreting" is defined by KRS 309.300(5).

(11) "Kentucky Board of Interpreters for the Deaf and Hard of Hearing" means:

(a) "Board" as defined by KRS 309.300(1); and

(b) The board established by KRS 309.302.

(12) "Kentucky Commission on the Deaf and Hard of Hearing" or "KCDHH" means the commission established by KRS 163.506.

(13) "Office of Human Resource Management" or "OHRM" means the major organizational unit of the cabinet established by KRS 194A.030(9).

(14) "Ongoing interpreting services" means interpreting services required to meet the needs

of a client in a cabinet program in accordance with the client's plan of care, case plan, or program eligibility.

(15) "Qualified interpreter" means an interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is:

(a) Able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary; and

(b) A sign language interpreter, oral transliterator, or cued-language transliterator.

(16) "Time-limited interpreting services" means interpreting services that are provided to a client at a specific time and location in order to access a cabinet program.

Section 2. Provision of Interpreting Services. (1) A cabinet program shall:

(a) Make available qualified interpreting services to a client who is deaf, hard of hearing, or speech impaired; and

(b) Take appropriate steps to ensure that communication with an applicant, participant, member of the public, or companion with a disability is as effective as communication with others.

(2) Interpreting services provided by a cabinet program shall be at no charge to a client.

(3) Interpreting provided by a cabinet program shall be in accordance with KRS 309.301.

(4) On behalf of a client who is deaf, hard of hearing, or speech impaired and does not waive interpreting services in accordance with Section 4(2) of this administrative regulation, a cabinet program shall:

(a) Access a qualified interpreter licensed by the Kentucky Board of Interpreters for the Deaf and Hard of Hearing in accordance with KRS 309.300-309.319 and 201 KAR Chapter 39; or

(b) Request interpreting services:

1. In accordance with 735 KAR 2:050; and

2. Through the Interpreter Referral Service Program established by KCDHH in 735 KAR Chapter 2.

(5) A cabinet program may utilize an employee for interpreting as an alternative to the requirement of subsection (4) of this section if:

(a) The cabinet program employs an individual who is licensed by the Kentucky Board of Interpreters for the Deaf and Hard of Hearing in accordance with KRS 309.300-309.319 and 201 KAR Chapter 39;

(b) The employee is a qualified interpreter; and

(c) No actual or perceived conflict exists between the employee's job duties and the provision of interpreting services for the client, as approved by the employee's supervisor.

(6) A cabinet program or a client may access the Kentucky Telephone or Video Relay Service Program established in accordance with KRS 278.548.

Section 3. Interpreter Selection. (1) In the selection of an interpreter, a cabinet program shall give consideration to:

(a) An interpreter's:

1. Licensure;

2. Certification;

3. Years of experience; and

4. Exposure to the cabinet program or familiarity with the jargon of the cabinet program;

(b) Prior use of the interpreter by the cabinet program for the same client;

(c) Any preference of the client; and

(d) The estimated cost for the interpreting services.

(2) An interpreter who provides interpreting services to a cabinet program shall:

(a) Comply with:

1. 735 KAR 2:040 if the interpreter is retained through KCDHH Interpreter Referral Services Program; and

2. Licensure requirements of the Kentucky Board of Interpreters for the Deaf and Hard of Hearing in accordance with KRS 309.300-309.319 and 201 KAR Chapter 39; and

(b) Agree to confidentiality in the provision of interpreting services in accordance with KRS 194A.060, and 45 C.F.R. 160, 162, and 164.

Section 4. Client Rights. (1) A cabinet program shall inform a client who is deaf, hard of hearing, or speech impaired of the client's right to effective communication through the provision of the CHFS-OHRM-EEO-2, Your Right to Equally Effective Communication.

(2)(a) A client who is deaf, hard of hearing, or speech impaired shall have the right to waive interpreting services provided by a cabinet program.

(b) To waive interpreting services:

1. A client shall complete and sign the CHFS-OHRM-EEO-3, Waiver of Free Interpreting Services; and

2. The cabinet program shall provide a copy of the signed CHFS-OHRM-EEO-3 to the client.

(c) A client may rescind the CHFS-OHRM-EEO-3 at any time.

(d) A client may rely on an accompanying adult companion who uses sign language to interpret or facilitate communication if:

1. The client makes the request;

2. The accompanying adult companion agrees;

3. Reliance on the accompanying adult companion is appropriate under the circumstances; and

4. The accompanying adult companion's impartiality or effectiveness is not in doubt.

(3) If a client refuses a specific interpreter, a cabinet program shall attempt to find a replacement but shall not guarantee a replacement.

Section 5. Payment for Interpreting Services. (1)(a) Unless an emergency exists, a cabinet program shall approve payment for interpreting services, whether time-limited or ongoing interpreting services, with an interpreter prior to the provision of interpreting services to a client.

(b) The total payment approved shall:

1. Be documented in writing;

2. Be copied or shared with the interpreter and the cabinet program;

3. Include identifying information about the cabinet program and the assignment; and

4. Include a breakdown of the interpreter's:

a. Hourly rate in accordance with subsection (3) of this section;

b. Projected number of hours for the assignment in accordance with subsection (4) of this section;

c. Projected mileage;

d. Meal required during the assignment; and

e. Overnight lodging requested for the assignment in accordance with paragraph (c) of this subsection.

(c) An overnight lodging request for interpreting services shall include:

1. A justification for the overnight lodging;

2. The estimated length of the lodging;

3. A preferred lodging establishment; and

4. Projected lodging costs.

(2) Mileage and meal reimbursement shall be in accordance with 200 KAR 2:006.

(3)(a) A cabinet program shall pay an interpreter an hourly rate:

1. For interpreting services provided Monday through Friday between the hours of 8 a.m. and 5 p.m.; and

2. Consistent with the prevailing rate for the service area.

(b) In addition to the hourly rate established in paragraph (a) of this subsection, a cabinet program shall pay an enhanced hourly rate consistent with the prevailing enhanced rate for the service area if the interpreter's assignment falls:

1. Between 5 p.m. and 8 a.m. Monday through Friday;

2. Between 5 p.m. Friday and 8 a.m. Monday; or

3. On a state holiday established in accordance with KRS 2.110.

(c) The cabinet shall consult annually with KCDHH regarding accessibility and the provision of accommodations.

(4)(a) With the exception of mileage, a meal, and lodging, the hourly rate established in accordance with subsection (3) of this section shall include:

1. Time on the assignment; and

2. Reasonable time traveling for the assignment.

(b) A cabinet program shall determine an interpreter's time traveling as reasonable based on:

1. Mileage; and

2. Road and driving conditions on the date of the interpreter's assignment.

(5) If an interpreter's assignment in a cabinet program is less than two (2) hours, the cabinet program shall pay:

(a) Two (2) hours for the assignment; or

(b) Less than two (2) hours in accordance with the invoice submitted for the assignment.

(6)(a) A cabinet program shall pay an interpreter for the assignment in accordance with the payment approved pursuant to subsection (1) of this section if:

1. A client does not appear for an appointment or cancels an appointment with less than twenty-four (24) hours' notice; or

2. The cabinet fails to notify the interpreter of the cancellation twenty-four (24) hours or more in advance of the appointment.

(b) The cabinet shall re-schedule an appointment if:

1. A request to re-schedule is received two (2) business days in advance of the appointment; or

2.a. The cabinet determines that staff of the cabinet program, the interpreter, or the client is not at fault for failure to keep the appointment; and

b. The client requests re-scheduling of the appointment.

(7)(a) An interpreter shall:

1. Document actual costs of interpreting services to a cabinet program; and

2. Submit an invoice to the cabinet program for verification and payment.

(b) For each assignment, an interpreter's invoice shall contain the following:

1. The purpose of the assignment, including the client's name or an identifier for the client's case;

2. For each date of the assignment, the:

a. Hours of the day during which the interpreting services were provided;

b. Total number of hours of the interpreting services;

c. Hourly rate for the interpreting services;

d. Mileage for the assignment; and

e. Rate per mile in accordance with subsection (2) of this section;

3. The total cost for any lodging;
4. A grand total for all costs;
5. Contact information for an employee with the cabinet program to verify:
 - a. The provision of interpreting services; and
 - b. Costs approved in accordance with subsection (1) of this section;
6. The interpreter's:
 - a. Name;
 - b. Social Security number or federal identification number;
 - c. Contact number;
 - d. E-mail address, if one is available; and
 - e. Mailing address;
7. The date of the invoice; and
8. A number for the invoice.

(c) If an interpreter submits an invoice to a cabinet program that includes lodging, the interpreter shall attach the original receipt from the lodging establishment.

(8)(a) Payment for interpreting services shall be available to an interpreter who is not:

1. A volunteer; or
2. An employee of a cabinet program.

(b) An employee of a cabinet program, who is utilized in accordance with Section 2(5) of this administrative regulation, shall not receive payment for interpreting services in addition to the employee's:

1. Pay and employee benefits from the cabinet program; and
2. Reimbursement for travel in accordance with 200 KAR 2:006.

Section 6. Complaints. If an individual is aggrieved by a cabinet program's provision of, or failure to provide, interpreting services in accordance with this administrative regulation, the individual may submit a:

(1) Grievance to the KCDHH in accordance with 735 KAR 2:060; or

(2) Client Civil Rights complaint, if discriminatory action by a cabinet program is alleged, to the:

- (a) Office of Human Resource Management in accordance with 920 KAR 1:090;
- (b) U.S. Department of Health and Human Services' Office for Civil Rights;
- (c) U.S. Department of Agriculture's Office of the Assistant Secretary for Civil Rights;
- (d) U.S. Department of Education's Office for Civil Rights;
- (e) U.S. Department of Labor's Civil Rights Center;
- (f) U.S. Department of Justice's Civil Rights Division;
- (g) Kentucky Commission on Human Rights; or
- (h) Another federal, state, or local agency with jurisdiction over the cabinet program involved in the alleged discrimination.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "CHFS-OHRM-EEO-2, Your Right to Equally Effective Communication", March 2020; and

(b) "CHFS-OHRM-EEO-3, Waiver of Free Interpreting Services", 2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Office of Human Resource Management, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (20 Ky.R. 2941; 3203; 21 Ky.R.19; eff. 6-9-1994; Recodified from 900 KAR 1:070, 10-30-1998; 36 Ky.R. 1366; 1940; eff. 3-5-2010; Crt eff. 05-29-2019; 46 Ky.R. 1970, 2670; 47 Ky.R. 4; eff. 7-

29-2020.)